IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

OP.No. 9601 of 1998(R)

PETITIONER:

TATA TEA LIMITED,
REGIONAL OFFICE,
MUNNAR - 685 612,
REPRESENTED BY ITS
DEPUTY GENERAL MANAGER-IR,
MR. P.G. PRAKASH SHANKAR.

BY ADV.SRI.E.K.NANDAKUMAR.

RESPONDENTS:
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1. **EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL,**
   SKYLARK BUILDING, NEHRU PLACE,
   NEW DELHI - 10 019.

2. **THE REGIONAL PROVIDENT FUND COMMISSIONER,**
   P.B. NO. 1016, PATTOM PALACE,
   TRIVANDRUM - 695 004.

3. **THE NATIONAL UNION OF PLANTATION STAFF (NUPS),**
   MUNNAR, REPESENTED BY ITS SECRETARY.

BY ADV. SRI.H.B.SHENOY,
SRI.B.ASHOK B. SHENOY,
SMT.LAKSHMI B.SHENOY.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 16408/1998 IN O.P. 9601/1998

DISMISSED

18/07/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MEMORANDUM OF SETTLEMENT DTD. 27/02/1980.

EXT.P.2: COPY OF THE PROCEEDINGS DTD. 04/05/1995 PASSED BY THE R.2.

EXT.P.3: COPY OF THE PETITION DTD. 25/06/1995 FILED BY THE PETITIONER BEFORE THE GOVERNMENT OF INDIA.

EXT.P.4: COPY OF THE ORDER PASSED BY THE R.1. TRIBUNAL DTD. 12/01/1998.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

P.A. TO JUDGE

prv.

Thottathil B. Radhakrishnan, J.

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O.P.No.9601 of 1998

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Dated this the 18th day of July, 2007.

JUDGMENT

Having regard to the fact that the impugned Ext.P4 is a statutory order by the Appellate Tribunal under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the "Act", service of notice to the first respondent Tribunal is dispensed with. The second respondent EPF organisation had been served with notice.

2. Heard the learned counsel for the petitioner and the learned counsel for the third respondent Union.

3. By Ext.P1 settlement, among other things, the management and the trade unions recorded the following in Clause 2 thereof as follows:

"The management will take immediate steps to reduce the recent increase in workloads by streamlining existing systems, procedures etc. including mechanisation and it is anticipated that this will be completed by 31-12-80. As a special case, during the interim period, from 1st Aug, 1979 to 31st December, 1980, office staff will receive ad hoc payments as follows:-

a) Those in Gen.Grade : Rs.40/- per month.

b) Those in Sr.Gr.A : Rs.50/- per month.

c) Those in Sr.Gr-B or special gr. : Rs.60/- per month.

Those ad hoc payments will not attract OT, PF, bonus, gratuity or

other similar fringe benefits.

Mechanisation will not result in reduction of existing staff strength or affect the promotional opportunities of staff. Any problem arising out of the proposed mechanisation will be discussed between the parties and settled".

4. The issue arising for decision is as to whether the statutory authorities, including the Tribunal, had acted in excess of jurisdiction or had committed any error of law in holding that the amount covered as ad hoc payment in terms of the aforesaid clause as part of basic wages as defined in Section 2(b) of the Act and whether the impugned orders fastening the liability to make contribution are justified.

5. Sometime in 1986, that is, after about six years of Ext.P1 settlement, the third respondent

moved the statutory authority for adjudication under Section 7-A of the Act on the allegation that the ad hoc payments made in terms of Clause 2 of Ext.P1 has been excluded by the management while making contribution under the Act. This was followed by two other representations and thereafter O.P.No.8126 of 1993 before this Court, which resulted in the Commissioner being directed to pass final orders on those representations of the trade unions. This resulted in Ext.P2 being passed after hearing the parties. The management, bereft of an appellate statutory remedy at that point of time addressed Ext.P3 under Section 19-A of the Act to the legal advisor in the Government of India. That was later on forwarded to the Tribunal on its constitution. The parties were heard and the Tribunal after adverting to and considering the rival contentions formed the decision contained in Ext.P2. In support of the writ petition, learned counsel for the petitioner

argued that the component which is called "ad hoc payments" in Clause 2 of Ext.P1 is not something that could fit into the definition of basic wages in terms of Section 2(b) of the Act and that on an interpretation of the said provision and harmoniously construing along with Section 6 of the Act in the light of the decision of the Apex Court, the impugned decisions do not stand. In support of this argument, the decision of the Apex Court in **Bridge and Roofs Co. Ltd. v. Union of India (1962-II LLJ 490)**, of the Delhi High Court in **Burmah Shell Oil Storage and Distributing Co.Ltd. v. Regional Provident Fund Commissioner, Delhi (1981-II LLJ 86)** of the Madras High Court in **Regional Commissioner, EPF, Tamil Nadu and Pondicherry v. Management of Southern Alloy Foundries (P) Ltd. (1982 (1) LLJ 28)** and also the decision in **E.I.D. Parry (India) Ltd. v. Regional Commissioner, EPF, Tamil Nadu (1984 (1) LLJ 300)** were referred to.

6. Learned counsel for the third respondent argued that the very fact that what is paid under Clause 2 of Ext.P1 are ad hoc payments, the same have to be treated as part of basic wages for the purpose of Section 2(b) of the Act and the issue is squarely covered against the petitioner by the decision of the Apex Court in **Shree Changdeo Sugar Mills and another v. Union of India and another (2001 (1) LLJ 698)**. It was further argued that notwithstanding the nomenclature of the payment as ad hoc payments, the correctness of the payment in terms of Clause 2 of Ext.P1 essentially shows that it is part of basic wages as defined in Section 2 (b) and such payments do not fall among the three exceptions carved out in that provision.

7. Learned counsel for the petitioner further argued that the decision in **Shree Changdeo Sugar**

Mill's case (supra) referred to by the learned counsel for the third respondent does not really apply to the facts of the case and what was essentially considered in that decision was as to whether a workmen must have actually worked to earn the benefit of the Act to bring the ad hoc payment made in terms of the settlement within the purview of Section 2(b) of the Act. It was also argued that the payment agreed to under the settlement which fall for consideration in **Shree Changdeo Sugar Mill's** case (supra) was wages and not ad hoc wages.

8. At the outset, it has to be noticed that for about six years after Ext.P1 settlement was entered into, it has not been the case of either the Department or the trade union that the payment made in terms of Clause 2 would fall within the term of basic wages in Section 2(b) and therefore

liable to be reckoned to determine the compensation. Such issue was essentially raked up only by a representation in 1986. But for repeated representations leading to O.P.No.8126 of 1993, it is also not a case where the third respondent, a recognized trade union, had pursued the complaint as could be expected from a person aggrieved. This is in the context of the fact that, the recovery under the impugned orders remained stayed by this Court from the stage of admission and with the passage of time, many of those, who would have enjoyed the benefit of the Act, would have retired from the service of the writ petitioner. Having regard to the questions of law raised for decision and vigorously pursued before the statutory authorities, including the first respondent Tribunal, this is not a case the writ petition could be thrown out by treating it as a contumacious exercise by the management to avoid statutory liability.

9. On to the question as to whether the ad hoc payments in terms of Clause 2 of Ext.P1 fall within the term "basic wages" in Section 2(d), in my considered view, barring the propositions of law enunciated and by the Constitution Bench in **Bridge and Roofs Co.'s** case (supra) and the assimilation of that decision in the other decisions referred to above, including that rendered by the Honourable Apex Court in **Shree Changdeo Sugar Mill's** case (supra), none of those judgments has a direct application on the facts of the case in hand. In **Shree Changdeo Sugar Mill's** case (supra) cited by the learned counsel for the third respondent, the primary issue that fell for consideration, as already noticed, was as to whether a workman was actually beyond duty for the purpose of the application of the amount earned by him as referable to basic wages in Section 2(b) of the

Act. The distinctions between the facts of the case dealt with by different High Courts in the judgments noted above would also show that, the question whether a particular payment to an employee is part of basic wages, is a question to be determined on the basis of the facts of each case.

10. In so far as the case in hand is concerned, Clause 2 of Ext.P1 would clearly show that the ad hoc payments to the office staff provided in the said clause were agreed to be paid for the increased workload that they had to handle, until such workload is reduced by streamlining the existing system procedures etc., including mechanisation. The management anticipated that such a mechanisation would be completed by 31-3-1980. It was therefore that the ad hoc payments were agreed to be paid to the office staff, as a special case, from 1-8-1979 to 31-12-1980. I may

immediately advert to the uncontroverted statement in Ext.P4 appellate decision that "the name of this payment as ad hoc is believed from the fact that although in the first settlement it was provided that mechanisation would be done by the December of that year. But for these 17 years it has not been completed". Therefore, the fact remains that, though streamlining of the office procedures and thereby reduction of workload was contemplated as an event that would happen by 31-12-1980, it had not happened for at least 17 years thereafter. So much so, the word "ad hoc" had lost its significance. Even otherwise, what was being paid was for the additional workload, thereby meaning as the emoluments for the work that a person had to do on account of the work as he is a member of the office staff. Reverting to Section 2(b) of the Act, basic wages means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the

contract of employment and which are paid or payable in cash to him. Therefore, all emoluments, except those excluded in terms of the provisions in Section 2(b), forms part of basic wages. The word "emoluments" is not defined in the Act. Emoluments is an advantage; profit arising from employment as salary or fee etc. (See Chambers's 20th century dictionary). It is clear from a plain reading of Clause 2 of Ext.P1 that, what was characterized as ad hoc payment, is a payment for the additional workload that the office staff bears, unless alternate arrangements are made as contemplated in the said Clause. So much so, I have no hesitation to hold that, ad hoc payment in Clause 2 of Ext.P1 forms part of basic wages for the purpose of Section 2(d) of the Act.

11. Having regard to the view taken above, the impugned orders cannot be found fault with on any count referable to law or jurisdiction. But then,

the fact remains that, with the passage of time and because of the fact that the action or omission that the management had resulted in the proceedings, cannot be treated as contumacious. The operation of the impugned orders, as already noticed, remained stayed during the pendency of this writ petition. Therefore, while declining to interfere with the impugned orders, it is directed that, the contributions, on account of the impugned orders, will be payable only from the commencement of the financial year 2007-08.

With the above directions, the impugned orders are confirmed and the writ petition is disposed of accordingly. No costs.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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O.P.No.9601 of 1998

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JUDGMENT

Dated:18-7-2007